
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|--------------------------------|---|------------------------|
| In the Matter of |) | |
| |) | |
| Beacon Broadcasting, LLC |) | File No. EB-09-DV-0044 |
| Licensee of Radio Station KWAY |) | |
| |) | |
| Facility ID # 31531 |) | |
| Lamar, Colorado |) | NOV No. V201032800008 |
| |) | |

NOTICE OF VIOLATION

Released: January 4, 2010

By the District Director, Denver Office, Western Region, Enforcement Bureau:

1. This is a Notice of Violation ("Notice") issued pursuant to Section 1.89 of the Commission's Rules,¹ to Beacon Broadcasting, LLC ("Beacon"), licensee of radio station KWAY in Lamar, Colorado. This Notice may be combined with a further action, if further action is warranted.²

2. On November 6, 2009, an agent of the Enforcement Bureau's Denver Office inspected KWAY, located at 224 S. Main Street, in Lamar, Colorado, and observed the following violations:

- a. 47 C.F.R. § 11.35(a): Emergency Alert System ("EAS") "Participants must determine the cause of any failure to receive the required tests or activations specified in Sections 11.61(a)(1) and (a)(2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840 of this chapter for all broadcast streams . . . "

At the time of the inspection, the agent found there were no entries in the station log indicating why Required Weekly Tests ("RWTs") from the station's local primary (LP-1) monitoring assignment, KLMR-AM had not been received for the weeks of October 5-11, 2009, and October 19-25, 2009. Additionally, there were no entries in the station log indicating why the RWTs from the station's second monitoring assignments for the weeks of October 5, 2009 to November 1, 2009, had not been received.

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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- b. 47 C.F.R. § 11.15: "The EAS Operating Handbook . . . must be located at normal duty positions or EAS equipment locations when an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions."

At the time of the inspection, the agent found that no EAS Operating Handbook was available.

3. As the nation's emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees. Pursuant to Section 403 of the Communications Act of 1934, as amended,³ and Section 1.89 of the Commission's Rules, we seek additional information concerning the violations and any remedial actions the station may have taken. Therefore, Beacon must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁴

4. In accordance with Section 1.16 of the Commission's Rules, we direct Beacon to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Beacon with personal knowledge of the representations provided in Beacon's response, verifying the truth and accuracy of the information therein,⁵ and confirming that all of the information requested by this Notice which is in the licensee's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁶

5. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

³ 47 U.S.C. § 403.

⁴ 47 C.F.R. § 1.89(c).

⁵ Section 1.16 of the Commission's Rules provides that "[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'." 47 C.F.R. § 1.16.

⁶ 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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Denver District Office
215 South Wadsworth Boulevard, Suite 303
Lakewood, Colorado 80226

6. This Notice shall be sent to Beacon Broadcasting, LLC, at its address of record.

7. The Privacy Act of 1974⁷ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver District Office
Western Region
Enforcement Bureau

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).